

**COMMISSION ON COMMON OWNERSHIP COMMUNITIES
MONTGOMERY COUNTY, MARYLAND**

Marion Woods HOA,
Complainant

v.

Case **#52-09**
May 5, 2010

David and Yesenia Bonilla,
Respondents

JUDGMENT BY DEFAULT

This dispute came before a panel of the Commission on Complainant's application for a default judgment against Respondent.

The panel has reviewed the record and makes the following findings of fact and conclusions of law.

Findings of Fact

1. The Complainant is a homeowners association within the meaning of Section 11B-101 of the Real Property Article of the Code of Maryland, and its covenants are filed in the land records of Montgomery County, Maryland.
2. The Respondents own a lot subject to the covenants of the Complainant.
3. Sometime in 2006, the Respondents installed a walkway of brick and concrete along their property line without having applied for and obtained approval from Complainant for this change. Beginning at least as early as July 18, 2006, Complainant wrote Respondents to notify them of the alleged violation and to request them to submit an architectural change application for the work. Respondents eventually complied and submitted the application after the work was done, and on October 17, 2006; however, Complainant denied the application and ordered Respondents to remove it.
4. By December 28, 2007, Respondents had not removed the walkway and Complainant sent them a Notice of Hearing on the issue of what penalties the Complainant should impose on them. It is not clear what happened at that

hearing and another Notice of Hearing was issued May 12, 2008, and then again on December 3, 2008.

5. On September 9, 2009, Complainant filed this dispute with the Commission, and on the same day the Commission sent a copy of the complaint to the Respondents, instructing them that they must answer the complaint within 30 days.

6. Respondents did not file any answer to the complaint, and on October 13, 2009, the Commission notified the Complainant of its right to request an order of default. The Commission sent a copy of this notice to the Respondent, along with a copy of the Commission's *Default Judgment Procedures*. Complainant filed for a default order on October 19, 2009, and a copy of its request was sent to the Respondents.

7. On October 20, 2009, the Commission wrote to both parties advising them that the Commission would take up the dispute at its monthly meeting November 4, 2009, and inviting them both to comment upon the staff's recommendation that the Commission accept jurisdiction of the dispute and issue an order of default. Respondents filed no reply.

8. On November 4, 2009, the Commission voted to accept jurisdiction of the dispute and to grant the request for an order of default. The order of default and the order to show cause were mailed to Respondents on November 5, 2009. Respondents signed a receipt for these documents on November 9, 2009.

9. Respondents made no reply to the Commission showing cause why a judgment should not be issued against them, and the staff notified Complainant of the failure to reply by letter dated December 8, 2009. On January 20, 2010, Complainant requested entry of a final judgment, and filed a photograph with the Commission showing the conditions on Respondents' lot. This photograph is dated January 4, 2010. The photograph shows that the concrete walkway has been broken up into large square chunks and lifted out of the ground; the chunks are lying adjacent to the trench in which they had been. The trench itself appears to be filled with bare dirt and gravel. The overall impression is unsightly.

10. Article VI of Complainant's Declaration of Covenants (Commission Exhibit 1 at 52-53), provides that no building, fence, wall, "or other structure" can be installed on any lot without the Complainant's approval.

Conclusions of Law

1. The Commission has subject matter jurisdiction of this dispute pursuant to Section 10B-8(3)(A)(i) of the Montgomery County Code.

2. The Commission has personal jurisdiction over the Respondents.

3. The Respondent is subject to the Complainant's governing documents and rules and regulations. These documents prohibit the making of any changes to the lot without the advance approval of the Complainant. The panel finds that a concrete walkway is a "structure" within the meaning of these documents, and further finds that Respondents are in violation of these documents.

4. The panel further finds that Complainant is entitled to be reimbursed for its filing fee in this matter by Respondents.

ORDER

It is, therefore, this 5th day of May, 2010, by the Commission on Common Ownership Communities of Montgomery County, Maryland,

ORDERED that the Respondents, David and Yesenia Bonilla, shall:

1. within 30 days of the date of this Order, remove the entire walkway and its components from the lot and restore the landscaping to its condition prior to the installation of the walkway, and in compliance with community standards; and,

2. pay to the Complainant the sum of \$50.00 as its filing fee in this matter within 30 days after the date of this Judgment; and,

3. it is further ORDERED that should Respondent fail to comply with this Order, the Complainant may collect the sum due in any manner authorized by its association documents or by statute.

The panel reminds Respondents that pursuant to Chapter 10B, Section 13(j), a violation of this Order is a Class A violation of the Montgomery County Code and subject to a fine of up to \$500.00 per day.

Any party aggrieved by this decision may file an appeal to the Circuit Court of Montgomery County, Maryland within 30 days from the date of this decision pursuant to the Maryland Rules of Procedure governing appeals from administrative decisions.

Commissioners Gelfound and Greenspan concur.

COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND

By: _____
Allen Farrar, Panel Chair
May 5, 2010